

which temporarily caused him to be unable to perform his employment duties. Claimant acknowledges this condition was not related to his employment with respondent and he so advised his supervisor, Mr. Monty Bonds. After being advised of claimant's preexisting back condition, Mr. Bonds began keeping handwritten notes on claimant's activities.

Claimant alleges that on July 22, 1997, while hanging a piece of treated plywood, he twisted when the wood began to fall and he heard a sound from his back like "breaking spaghetti." Claimant thought that he was okay at that time, but the next morning he could not get out of bed. Claimant went to the VA Hospital on July 28, 1997, where he was examined by Xiao Zeng Zhuang, M.D. At that time, Dr. Zhuang advised claimant that he possibly needed back surgery. There was no mention in the medical records that claimant's condition was work related at that time. Claimant contacted respondent about his condition but did not advise the respondent of a work-related connection to this injury. Mr. Bonds admits claimant brought the initial note to him on August 5, 1997, but was not told it was from a work-related accident.

Claimant again saw the doctor on August 12, 1997, experiencing severe back and leg pain and was diagnosed with severe degenerative arthritis of the lumbar spine. He was advised to avoid heavy work. Claimant again contacted respondent and spoke to Mr. Bonds on August 12, 1997. It is acknowledged by Mr. Bond that claimant advised respondent about the July 22, 1997, work-related injury and requested information regarding workers compensation benefits at the August 12 meeting. While claimant's attorney argues in his brief that claimant advised respondent of the work-related nature of the condition prior to August 12, claimant testified that August 12 was the first time he provided notice to respondent of any work-related connection to this accident.

The Appeals Board will first consider whether claimant suffered accidental injury arising out of and in the course of his employment on the date alleged. While the medical reports do not specifically mention a work-related incident, nevertheless, claimant's testimony regarding how the incident occurred is basically uncontradicted. The Appeals Board, for preliminary hearing purposes, will accept claimant's explanation of what occurred on July 22, 1997.

With regard to whether claimant provided timely notice to respondent or had just cause for exceeding the ten-day limits of K.S.A. 44-520, the Appeals Board must respectfully disagree with the Administrative Law Judge. The Administrative Law Judge acknowledged this was a very close call regarding notice and just cause, finding that the limitations of K.S.A. 44-520 were "draconian" and "a pretty heavy burden on the claimant as far as getting that reported."

The Appeals Board acknowledges the limitations listed in K.S.A. 44-520 are strict but, nevertheless, they must be enforced. The claimant admits to not having advised respondent before August 12, 1997, of the work-related nature of the incident. As this is more than ten days beyond the accident date and violates the limitations set forth in K.S.A.

44-520, the Appeals Board finds claimant failed to provide notice of the accident within ten days pursuant to K.S.A. 44-520.

The Appeals Board must next consider whether claimant had just cause for failing to timely advise respondent of the accident. Respondent cites Russell v. MCI Business Services, Docket No. 201,706 (October 1995), in support of its position that claimant has failed to show just cause for failing to notify respondent in a timely fashion of the accident. In Russell, the Appeals Board discussed several factors which should be considered in determining whether just cause exists. First, the fact finder must consider the nature of the accident, including whether the accident occurred as a single, traumatic event or developed gradually. In this instance, claimant described a specific incident on July 22, 1997, when he heard a sound like "breaking spaghetti." The next morning claimant was unable to get out of bed. This indicates the nature of the accident was a single traumatic event occurring on July 22, 1997.

The Appeals Board next must consider whether claimant was aware that he sustained an injury or accident on the job. Claimant described a specific incident on July 22, 1997, followed by a substantial period of immobility, lasting for several days. The Appeals Board finds claimant was aware that he had sustained an injury or accident in this instance.

The Appeals Board next considers the nature and the history of claimant's symptoms. Again, a specific onset with a severe result is significant.

Finally, the Appeals Board considers whether the employee was aware or should have been aware of the requirements of reporting a work-related accident, and whether respondent posted notices required by K.A.R. 51-13-1, which states in part:

Employers operating under this act shall post notices advising employees what to do in case of injury. Notices prepared by the Director for that purpose may be obtained by request to the Director.

In this instance, it is acknowledged no Form 40 was posted by respondent advising claimant of the obligations under the Workers Compensation Act. However, claimant acknowledges a notice provided by respondent was posted on the wall of the elevator, advising that all accidents were to be reported immediately. Claimant further acknowledges suffering a work-related accident at an earlier date when he cut his finger. This accident was reported immediately and claimant was provided immediate medical treatment. Therefore, the Appeals Board finds that claimant was aware that all accidents were to be reported immediately.

When just cause is an issue, the above factors should be considered on a case-by-case basis with each case being determined on its own facts. The Appeals Board finds, in this instance, persuasive evidence establishing that claimant was aware he

suffered an accidental injury from a traumatic event with almost immediate consequences. The July 28, 1997, note from Dr. Zhuang mentions possible back surgery, thus, alerting claimant to the seriousness of his condition. Nevertheless, claimant admits that no notice of the work-related nature of his condition was provided to respondent until August 12, 1997. The Appeals Board finds, based upon the evidence in this case, that claimant has failed to prove just cause for not notifying respondent within ten days of the date of accident as is required by K.S.A. 44-520.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order, dated September 30, 1997, entered by Administrative Law Judge Jon L. Frobish should be, and hereby is, reversed and benefits shall be denied claimant for the injury alleged on July 22, 1997.

IT IS SO ORDERED.

Dated this ____ day of November 1997.

BOARD MEMBER

c: Dale V. Slape, Wichita, KS
Wade A. Dorothy, Lenexa, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director